IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 32822 of 2005(G)

PETITIONER:

M.A. KUTTAPPAN,
MYALIKKAROTH HOUSE, NEZHOOR P.O., KOTTAYAM DIST.

BY ADV. SRI.M.G.KARTHIKEYAN

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO THE GOVT.,
DEPT. OF AGRICULTURE, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF AGRICULTURE,
THIRUVANANTHAPURAM.

3. THE PRINCIPAL AGRICULTURAL OFFICER,
WAYANAD.

4. THE PRINCIPAL AGRICULTURAL OFFICER,
KOTTAYAM.

BY GOVT. PLEADER SHRI.P.NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.32822 of 2005-G.

APPENDIX

Petitioner's Exhibits:

P1: Copy of the gratuity payment order dtd.1-7-1999.

P2: Copy of the order of the second respondent dtd.20-4-99.

P3: Copy of the chellan receipt dtd.13-5-99 evidencing payment of Rs.892/-.

P4: Copy of the liability certificate dtd.9-8-01 issued by the 4th respondent.

P5: Copy of the provisional liability certificate dtd.7-2-05 issued by the 2nd respondent.

P6: Copy of the objection dtd.21-1-2005 filed by the petitioner before the 2nd respondent.

P7: Copy of the liability certificate dtd.28-10-2005 issued by the 3rd respondent.

P8: Copy of the letter dtd.27-12-2005 issued by the 2nd respondent along with liability certificate.

Respondents' Exhibits:-

Nil.

// true copy //

P.A. To Judge.

kvs/-

K.K.DENESAN, J.

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WP(C).No.32822 of 2005-G.

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Dated this the 12th day of March, 2007.

J U D G M E N T

The petitioner retired from service while working as Agricultural Officer on 31-6-1999. He has approached this Court with the grievance that gratuity of Rs.98,567/- has not been disbursed to him.

2. Counter-affidavit filed by the respondent would show that steps were taken to assess the liability against the petitioner and in that context certain proceedings were going on. At some point of time, certain amount was found to be the liability against the petitioner but on further consideration that amount was reduced. In the year 2005, the total amount of liability has been quantified as Rs.7,69,041/- (Ext.P8).

3. It is contended that the liability fixed as per Ext.P5 shall not be deducted from the DCRG of the petitioner under Rule 3 of Part III K.S.R.

The said rule mandates that the liabilities of an employee should be quantified before retirement if possible and if quantification is done after retirement it shall be done within a period of three years on the employee becoming pensioner. Since the petitioner retired on 31-6-1999, the quantification of liability ought to have been done, in any event, before 30-6-2002. It is, therefore, evident that recovery of the amount shown as liability cannot be effected from the DCRG due to the petitioner in terms of Rule 3 of Part III K.S.R.

4. Government Pleader submits that there was no lapses on the part of the respondents in determining the final liability against the petitioner. A vigilance enquiry had been ordered and the entire records were handed over to the Vigilance for conducting the enquiry.

5. Heard both sides. The reason for not quantifying the liability may be the one stated above. But that is no justification to get over the statutory outer limit for taking action under Rule 3 of Part III

K.S.R. In the result, the petitioner is entitled to succeed.

6. Hence there shall be an order directing the respondents to pay Rs.98,567/- towards DCRG to the petitioner. The amount shall be disbursed within six weeks from the date of receipt of a copy of this Judgment.

7. Counsel for the petitioner strenuously argued for an order directing payment of interest on the above amount. In my view, this is not a fit case for awarding interest. It has come on record that a vigilance enquiry was going on and it was found that liability quantified to Rs.7 lakhs was fixed on the petitioner. But the same could not be done within three years. Otherwise, so much of amount would have been recovered from the petitioner. Hence, this is not a case where this Court will be justified in directing payment of interest to the petitioner in exercise of the discretionary jurisdiction under Article 226of the Constitution of India.

8. I make it clear that this Judgment will not

stand in the way of the respondents taking any other legal proceedings against the petitioner including the institution of a civil suit or invoking the provisions of the Public Accountants Act, in accordance with law.

The writ petition is disposed of as above.

K.K.DENESAN, JUDGE.

kvs/-